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EXAMINER	
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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HUYNH HEMINGWAY, ANH HUYNH, and JEFF FARNSWORTH

Appeal 2009-006312
Application 10/611,698
Technology Center 2400

Before JOSEPH L. DIXON, JEAN R. HOMERE, and THU A. DANG, *Administrative Patent Judges.*

DANG, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

I. STATEMENT OF THE CASE

Appellants appeal from the Examiner's final rejection of claims 1-10, 34, and 40-43 under 35 U.S.C. § 134(a) (2002). Claims 11-33 and 35-39 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

We affirm.

A. INVENTION

According to Appellants, the invention is directed to the field of media delivery techniques (Spec. 1, ¶[0001]).

B. ILLUSTRATIVE CLAIM

Claim 34 is exemplary and is reproduced below:

34. An article comprising:

a storage medium; and

instructions stored in the storage medium, which, when executed by a processor, cause the processor to generate and transmit one or more messages to a receiving computer system, the one or more messages including

a media message to be displayed on the receiving computer system as a first layer of an adaptive media message, the media message including a link;

logic for testing capabilities of the receiving computer system when the link is dereferenced; and

logic for displaying selected one of a plurality of versions of media content selected based on the results of testing capabilities of the receiving computer system, such that the receiving computer system may display the selected one of the

plurality of versions of the media content in the media message as a second layer of the adaptive media message.

C. REJECTION

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Sahai	US 6,594,699 B1	Jul. 15, 2003 (filed Oct. 10, 1997)
Dunning	US 7,024,485 B2	Apr. 4, 2006 (filed Nov. 8, 2002)

Claims 1-10, 34, and 40-43 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the teachings of Sahai in view of Dunning.

II. ISSUE

Has the Examiner erred in concluding that the combined teachings of Sahai in view of Dunning would have suggested one or more messages transmitted to a receiving computer system including "logic for testing capabilities of the receiving computer system when the link is dereferenced" (claim 34)? In particular, the issue turns on whether Sahai teaches or suggests a logic for testing.

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Sahai

1. Sahai discloses obtaining client capabilities and user preferences from a client and responds to a transfer request by streaming data over the

network to the client based on the capabilities and preferences (col. 2, ll. 61-64).

2. A server sends or streams and application to the client, such as a JAVA applet application in response to the initial HTTP request (col. 6, ll. 60-63), and the application sent by the server to the client asks the user to supply the capability information of the client and asks the user for user specification/preferences using specific questions (col. 6, l. 66 to col. 7, l. 3).

VI. ANALYSIS

In the Appeal Brief, with respect to representative claim 34, and claims 1-10 and 40-43 falling therewith (App. Br. 11), Appellants contend that neither the applied Sahai or Dunning reference "teaches or makes obvious a message that includes testing logic being sent to the receiving computer system" or "teaches or makes obvious inclusion of the link, which when dereferenced activates the testing logic" (App. Br. 10). With respect to claims 2-4, Appellants add similar argument that their invention differs from the claimed teachings because the claimed logic is directly contained in the one or more messages (App. Br. 11-12).

However, in the Examiner's Answer, the Examiner finds that "although the invention has been described with respect to the application residing on the client machine," the Examiner points to Sahai's teaching that "it is possible for the server 10, at the time of an initial hit on a home page for a multimedia service, to send or stream an application" (Ans. 13, citing Sahai at col. 6, ll. 57-62). The Examiner also holds that "such method of

downloading of any application data is knowledge clearly known to one of [sic] ordinary skill in the art at the time the invention was made" (Ans. 13).

In response, Appellants file a Reply Brief, contending that Appellants' "logic for testing" would be understood by a person of ordinary skill in the art "as logic that initiates a series of tests (or tasks) that are performed by the receiving computer system" (Reply Br. 2). Appellants point to Appellants' Specification for a discussion of "testing" and contend that "Sahai, on the other hand, acknowledges that the application sent to client 12 is incapable of testing the client 12" but instead merely discloses that "the person operating the client 12, may then respond to whatever questions are presented by the application" (*id.*).

Appellants' argument that a "logic for testing" is a "logic that initiates a series of tests (or tasks) that are performed by the receiving computer system" is not commensurate in scope with the language of representative claim 34. That is, the claims do not recite any such "initiates a series of tests" or "performed by the receiving computer system" limitation.

To address whether the combined teachings would have suggested "logic for testing capabilities of the receiving computer system when the link is dereferenced" as required by claim 34, we begin our analysis by giving the claims their broadest reasonable interpretation. *See In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004). Moreover, though Appellants point to Appellants' Specification for a discussion of testing, we will not read limitations from the Specification into the claims. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

Claim 34 does not place any limitation on what a "logic for testing" means, includes, or represents, other reciting that the logic is for use

(directly or indirectly) with the intending purpose of testing (by any person or application, at any time, in any manner). That is, contrary to Appellants' argument, the claims do not preclude logic for obtaining responses by a person to questions presented by an application. We therefore broadly but reasonably interpret "logic for testing" as any logic that can be directly or indirectly used for the purpose of testing the capabilities of a receiving computer by any person or application, at any time, in any manner.

Sahai discloses obtaining client capabilities from a client and responding to a transfer request by streaming data over the network to the client based on the capabilities (FF 1). An ordinarily skilled artisan would have understood Sahai to disclose or at the least suggest a "testing" of capabilities of the receiving computer system, as required in the claims.

Furthermore, Sahai discloses that the client capabilities are obtained by sending an application by the server to the client to ask the user to supply the capability information of the client (FF 2). An ordinarily skilled artisan would also have understood Sahai to disclose or at the least suggest one or more messages transmitted to a receiving computer system including "logic for testing capabilities of the receiving computer system when the link is dereferenced" as required by the claims. That is, in view of the claim construction above, we find Sahai to at the least suggest a logic that can be directly or indirectly used for the purpose of testing the capabilities of a receiving computer by any person or application, at any time, in any manner.

Accordingly, we agree with the Examiner that Sahai in view of Dunning would have suggested one or more messages transmitted to a receiving computer system including "logic for testing capabilities of the

receiving computer system when the link is dereferenced" as required by claim 34.

Appellants do not provide separate arguments with respect to independent claims 1 and 6 from those of representative claim 34. Similarly, Appellants repeat the arguments with respect to claims 2-4 (App. Br. 11-12). Accordingly, claims 1-4 and 6, and claims 5, 7-10 and 40-43 depending respectively from claims 1, 6, and 34, also fall with claim 34.

Though Appellants provide additional arguments for claims 5, 8-10 and 40-43 by indicating that the limitations of the claims are not taught by the applied references (App. Br. 12-17), the Examiner finds that such limitations are taught by Sahai, and particularly points out where in Sahai the limitations are found (Ans. 15-19). In the Reply Brief, Appellants provide no argument to dispute that the Examiner has correctly shown where all these claimed elements appear in the prior art (Reply Br. 2-3). Accordingly, claims 5, 8-10 and 40-43 still fall with claim 34.

VI. CONCLUSION AND DECISION

The Examiner did not err in concluding that claims 1-10, 34, and 40-43 are unpatentable under 35 U.S.C. § 103(a) over Sahai in view of Dunning.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

Erc

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